

46 CFR Subchapter M Frequently Asked Questions

What are the PIC requirements and when will they be implemented, considering that no one other than the Master or Mate/Pilot typically holds an MMC?

The Coast Guard is in the process of developing policy to address PIC requirements. We expect to publish policy shortly.

Some organizations will wish to apply to the Coast Guard to become a Subchapter M third-party organization to be able to provide Subchapter M compliance verification services immediately upon publication of the final rule. Will the Coast Guard offer additional guidance on this application process, and if so, when will this guidance be issued?

Yes. Section 139.120 of this rule sets out third-party organization (TPO) application requirements. Amplifying guidance, including an application checklist for TPOs, is being created and will be published in the near future in a guidebook to be posted on the Towing Vessel National Center of Expertise's website (<https://www.uscg.mil/hq/cg5/TVNCOE/>). We expect to update this guidebook frequently based on lessons learned as the TPO program is established.

Who may do business as an “approved third party?”

Recognized and Authorized Classification Societies, and other private commercial companies that meet the requirements and are approved by the Coast Guard, may conduct work as prescribed in Subchapter M as a TPO. Part 139 of Subchapter M sets the requirements for TPOs and a forthcoming TPO guidebook will provide further information.

When will the Coast Guard publish a list of Third Party Organizations?

Once a Third Party Organizations (TPO) is approved, it will be listed and shared on the TVNCOE website at www.uscg.mil/hq/cg5/TVNCOE/. Currently, all Authorized Classification Societies are automatically approved to act as TPOs as permitted by the Subchapter M requirements. Also, as part of an initiative to support a smooth rollout of Subchapter M, the Coast Guard is drafting additional implementation guidance for TPOs including a check sheet that will aid the applicant through the process. This line of effort should facilitate the TSMS Option and the 24-month phased-in compliance timeline.

What must a TPO do before issuing a TSMS Certificate?

Prior to issuance of the company's TSMS Certificate, a TPO must review the TSMS to verify compliance with the requirements of 46 CFR 138.220 and conduct a Management Audit as described in 46 CFR 138.315(a). The TPO is not required to visit individual vessels before issuing the TSMS certificate.

Who approves Towing Safety Management Systems?

Once the company's TSMS is developed, implemented at the management-level and audited by a TPO, the TPO will approve it and issue a TSMS certificate to the company.

What is the advantage of using the TSMS option?

A fully implemented Towing Safety Management System (SMS) establishes a comprehensive quality control system throughout the company which increases the safety and efficiency of all towing vessel operations. Across the maritime industry, vessel operators have told the Coast Guard that a proper TSMS increases safety while cutting overall operating costs. A proper TSMS will reduce accidents, equipment failures and undo delays. Accordingly, the Coast Guard will exercise appropriate discretion while implementing these regulations to incentivize using the TSMS option. Specifically, companies that employ the TSMS option will be afforded greater flexibility to complete required surveys and audits, which may reduce vessel downtime. For TSMS vessels, the Coast Guard will exercise flexibility in the scheduling and reduce the scope of COI inspections. Under the TSMS option, any visits the Coast Guard will make to a vessel will be de-scoped and the time onboard will be significantly less than the Coast Guard option. TSMS vessels will also not be subject to mandatory Coast Guard attendance for drydock or internal structural exams. Under the Coast Guard option, Coast Guard inspectors will visit the vessel at least annually and in some cases more frequently possibly holding operations until a Coast Guard inspector can visit the vessel.

Will the Coast Guard accept the AWO's Responsible Carrier Program as a TSMS? If so, when? If not, why not? Are there any other plans that the Coast Guard is considering as equivalent to a TSMS in addition to the AWO's RCP program.

AWO initially submitted their Responsible Carrier Program (RCP) for approval over a year ago and the Coast Guard responded that a final determination would need to wait until publication of the final rule and AWO could resubmit the RCP for consideration at that time. We have maintained a dialogue with AWO on this matter and recently met with them on this specific topic. AWO has resubmitted the RCP for final approval, so we can begin a final review of their submittal and prepare the Coast Guard's response. To date, no other entities have submitted an existing safety management system for our consideration.

If I choose the TSMS option, does a TPO surveyor have to attend/perform a credit drydock and will the Coast Guard attend?

No, the flexibility provided by the TSMS option allows the owner or managing operator to conduct drydock and ISEs using either an external or internal survey program. The external program would use the TPO surveyor while the internal survey program may use company and/or contracted surveyors to perform the drydock and ISE examinations in accordance with 46 CFR 137.325.

While the Coast Guard must be notified of the credit drydocking and ISE, the Coast Guard does not have to attend a drydock or ISE for vessels under the TSMS option. However, the Coast Guard may attend if there is reasonable cause to believe the program is deficient.

Additional details on how to receive a credit drydock and ISE will be provided in the compliance guidance that will be provided to TSAC and published for review and comment in the coming months.

Now that this rule is published, will the TVBP decal remain valid and will the Coast Guard continue to issue them?

The decals remain valid until they expire or until the vessel is issued a COI. As operations permit, the Coast Guard will continue to issue decals that will be valid until July 20, 2018. This “carryover” period is discussed in Subchapter M at 46 CFR 136.172 (and in the Final Rule preamble, 81 FR 40021).

Do OSHA requirements still apply to working conditions on towing vessels covered by Subchapter M?

Yes. OSHA’s requirements for these towing vessels will remain in effect until July 20, 2018, or when the vessel obtains its COI, whichever date is earlier. See 29 CFR 136.172. **However, the Coast Guard remains the lead agency and continues to receive reports of marine casualties for injuries, death, etc. as currently required by 46 CFR Part 4.** Beginning July 20, 2018 or the date of the issuance of a COI for a towing vessel, whichever comes earlier, existing towing vessels covered by Subchapter M will be “inspected vessels” within the meaning of the 1983 memorandum of understanding between the Coast Guard and OSHA and thus the working conditions of seamen on those vessels will not be covered by OSHA. Therefore, beginning on July 20, 2018, OSHA will cover seamen only on those towing vessels that will remain uninspected vessels. See 29 CFR 1936.105 for the types of towing vessels which will remain uninspected vessels.

A further delineation of the authorities of each agency and applicable requirements is provided in OSHA’s Directive: CPL 02-01-047 (Effective date: 02/22/2010) - Subject: OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS) - https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=4254.

How will the Coast Guard ensure compliance for vessels taking the Coast Guard only option?

Since this option does not include a fully implemented Safety Management System, the company and the vessel(s) will receive significantly more attention from the Coast Guard. Under the Coast Guard option, vessel compliance with Subchapter M will require a comprehensive Coast Guard inspection and follow-up exams. Initial inspections for

certification and follow up exams will be subject to the availability of Coast Guard resources and must be scheduled 90 days in advance of the inspection. Inspections for certification will likely require multiple visits by the Coast Guard to ensure resolution of deficiencies prior to issuance of the Certificate of Inspection (COI). Outstanding deficiencies may result in operational controls and may possibly delay vessel operations or COI issuance.

Will the Coast Guard use Petty Officers for Subchapter M?

Yes, consistent with the agency's policy regarding Enlisted Assistant Marine Inspectors, properly trained Petty Officers will form part of the Coast Guard's inspection workforce conducting inspections of towing vessels to verify compliance with Subchapter M.

Does the Coast Guard have enough personnel to issue COI's for all 6,000 boats in 4 years?

The Coast Guard is prepared for the estimated demand for annual inspections from owners and managing operators selecting the Coast Guard annual inspection option. The Coast Guard will closely monitor the demand for inspections and make resource adjustments as necessary. However, we do expect challenges scheduling these inspections and there may be delays. Accordingly, we are encouraging companies to consider the TSMS option. A Company may opt to use one of the TSMS compliance options to verify that their vessel's are in continuous compliance, therefore minimizing the need and presence of Coast Guard personnel on board the vessel as compared to the Coast Guard Option. Using a TSMS option may give companies more flexibility in their operational schedules.

Will the Coast Guard annual inspection (aka user) fee be applicable to a vessel that operates using a non-Coast Guard option to comply with Sub M?

Yes. Each vessel required to have a Certificate of Inspection in accordance with 46 CFR 2.10-01 is subject to the annual inspection fee.

What is the purpose of the required annual inspection fee?

By law the Coast Guard is required to charge a fee for services provided for vessels required to have a Certificate of Inspection (COI) to offset the cost of providing these services.

The table in 46 CFR 2.10-101 of this rule lists annual inspection fees for vessel types. "Sea-going Towing Vessels" are addressed as well as "Any inspected vessel not listed in this table." Does the Coast Guard plan set new annual inspection fees for Subchapter M inspected towing vessels?

Yes, but adding a new category to the annual inspection fee table will require a separate rulemaking. Until that separate rulemaking is completed, the Coast Guard is establishing

the existing fee of \$1,030 stated in 46 CFR 2.10–101 as the annual inspection fee for towing vessels subject to subchapter M, for any inspected vessel not listed in Table 2.10–101. As reflected in 46 CFR 2.10-1(b), this annual inspection fee will not be charged for an initial COI inspection but the fee will be charged annually starting a year later.

Is a drydock and internal structural exam required prior to the Coast Guard issuing the initial Certificate of Inspection?

No, a Coast Guard or Third Party Organization (TPO) credit drydock or internal structural exam (ISE) is not required to obtain the initial Certificate of Inspection (COI). The Coast Guard is not required to attend drydocks or ISEs prior to a towing vessel receiving its initial COI.

The OCMI may require additional examinations, including a drydock exam, of the vessel if he or she discovers or suspects damage or deterioration to hull plating or structural members that may affect the seaworthiness or fitness of the towing vessel.

When will my first credit drydock and ISE be required?

Upon obtaining the initial COI, the first credit drydock date required by 46 CFR 137.300 will be reflected on the COI. These dates will be in accordance with the 2.5 years for saltwater service and 5 years for freshwater service from the date on the initial COI.

What constitutes a Major Conversion and what is the process for making a determination?

The Coast Guard modified the definition of Major Conversion in the final rule to align the text in Subchapter M with the statutory definition in 46 U.S.C. 2101 (14a). The Coast Guard Marine Safety Center, which makes major conversion determinations, will continue to apply the longstanding policy in NVIC 10-81 Change 1 that has guided Coast Guard decision-making for the last 35 years. We recognize that it is not unusual for a vessel to undergo one or more re-powerings over the course of its service life. As indicated in NVIC 10-81, re-powerings may be deemed a major conversion, if the intent is clearly to extend the economic life of the vessel (or when conducted with other modifications that meet any of the criteria under the definition). Per the long-standing implementation of this policy, modifications that only involve replacement of aging equipment or material, propulsion system upgrades to achieve greater efficiency (e.g., conversions to alternative fuels) or compliance with environmental standards are not considered major conversions, but may still require verification of compliance to the existing regulations.